

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TECHLINK, INC., a Hawaiian corporation,

Plaintiff,

v.

GRAYS HARBOR PUBLIC  
DEVELOPMENT AUTHORITY, a  
Washington public corporation,

Defendants.

CASE NO. C06-5424RJB

ORDER DENYING MOTION  
FOR NEW TRIAL

This matter comes before the Court upon the Plaintiff's Motion for New Trial (Dkt. 134). The court is familiar with the records and files herein, the events of the trial, and documents filed in support of and in opposition to the motion.

The motion should be denied for the following reasons:

- (1) The issues presented in support of the motion for new trial were all considered by the court at the time of trial and the court's rulings were appropriate and consistent with the law
- (2) The authorities cited by the plaintiff for the proposition that the court should have ruled on the question of whether the contract was integrated rather than leaving that question to the jury were non-jury cases and the language from those cases and from the Restatement (Second) of Contracts § 209(2) do not stand for the proposition that the question of integration must always be presented to the judge rather than to the jury. *See Barber v. Rochester*, 52 Wn.2d 691(1958), *Emrich v. Connell*, 105 Wn.2d 551 (1986), *Lopez v. Reynoso*, 129 Wn. App. 165 (2005), *Blackthorne v. Posner*, 883 F. Supp. 1443 (D. Or. 1995).

1 The Blackthorne case involved a summary judgment motion. In that case, Judge  
2 Jones ruled that, before, trial, he would conduct a court hearing to determine  
3 integration and admissibility of certain evidence under Oregon law and under  
4 Federal Rule of Evidence 104. That procedure is certainly appropriate if a bench  
5 trial is to follow such a hearing. If, however, as in the case at bar, there is a fact  
6 issue on contract integration, to take that issue from the jury is to deny the parties  
7 their right to have a jury determine issues of fact.

8 Nor does the Restatement (Second) of Contracts § 209(2) stand for the  
9 proposition that an integration fact issue must always be decided by the judge and  
10 not the jury. Comment c. to § 209, Proof of Integration, provides, “Ordinarily the  
11 issue whether there is an integrated agreement is determined by the trial judge in  
12 the first instance. . .” Furthermore, both Federal Rule of Evidence Rule 104(b)  
13 and Washington Pattern Jury Instructions (Civil) Fifth Edition (§§ 301.05 &  
14 301.06) contemplate the procedure followed in this case.

15 The question of jury integration was properly given to the jury under proper jury  
16 instructions.

17 (3) The court’s Instruction No. 16 on lost opportunity damages was an appropriate  
18 statement of the law, but if in any way it was in error, the error was harmless  
19 because of the jury’s verdict on liability, which favored the defendant.

20 (4) While federal law does not specifically prohibit a judge from commenting on the  
21 evidence, the Washington State Constitution does prohibit such comments.  
22 Const., Art. IV, § 16 (“Judges shall not charge juries with respect to matters of  
23 fact, nor comment thereon, but shall declare the law.”) This diversity case was  
24 tried on the basis of Washington State law. The better practice for the court in  
25 such circumstances is to refrain from comment on the evidence. The language  
26 plaintiff believes the court should have added to the court’s Instruction No. 14 is  
27 such a comment on the evidence, and, in fact, is an unfair comment slanting the  
28 evidence in favor of the plaintiff.

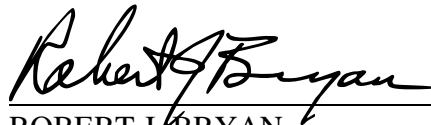
1  
2 (5) It is this court's opinion that the primary issue in this case was whether the jury  
3 would accept the testimony of the owner of plaintiff Techlink, Inc., Alan Kemp. It  
4 is apparent from the verdict that the jury did not accept Mr. Kemp's testimony,  
5 and a defense verdict resulted.

6 The trial was fair in all respects, was not against the weight of the evidence, and  
7 conformed to applicable law, upon which the jury was appropriately instructed. There was no  
8 miscarriage of justice here. Therefore, it is now

9 ORDERED that the Motion for New Trial is DENIED.

10 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel  
11 of record and to any party appearing pro se at said party's last known address.

12 DATED this 27<sup>th</sup> day of December, 2007.

13   
14 ROBERT J. BRYAN  
15 United States District Judge  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28